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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

ULYSSES ABURTO, an individual, on  
behalf of himself, and on behalf of all  
persons similarly situated,

Plaintiff,

vs.

VERIZON CALIFORNIA INC.,

Defendant.

CASE No. '11CV0088 JLS JMA

CLASS ACTION COMPLAINT FOR:

1. UNFAIR COMPETITION IN  
VIOLATION OF CAL. BUS. & PROF.  
CODE § 17200 *et seq.*;
2. FAILURE TO PAY OVERTIME  
COMPENSATION IN VIOLATION OF  
CAL. LAB. CODE §§ 510, 515.5, 551, 552,  
1194 AND 1198, *et seq.*;
3. FAILURE TO PROVIDE ACCURATE  
ITEMIZED STATEMENTS IN  
VIOLATION OF CAL. LAB. CODE §  
226; and,
4. FAILURE TO PAY OVERTIME  
COMPENSATION IN VIOLATION OF 29  
U.S.C. §§ 201, *et seq.*

**DEMAND FOR A JURY TRIAL**

1 Plaintiff Ulysses Aburto ("PLAINTIFF"), on behalf of himself and all other similarly  
2 situated current and former employees, allege on information and belief, except for his own acts  
3 and knowledge, the following:

4  
5 **THE PARTIES**

6 1. Verizon California Inc. was founded in 1929 and is based and headquartered  
7 in Philadelphia, Pennsylvania. At all relevant times mentioned herein, VERIZON conducted  
8 and continues to conduct substantial and regular business throughout California.

9 2. Verizon California Inc. provides domestic wireline telecommunications  
10 services to residential and business consumers located within California, Nevada, and  
11 Arizona. Verizon California Inc. hereinafter also referred to as "VERIZON" or  
12 "DEFENDANT" offers exchange telecommunication services for the transmission of  
13 telecommunications among customers located within a local calling area. Primarily known  
14 as a provider of mobile phone service, VERIZON is now offering alternative forms of phone  
15 service, including local and long distance, using traditional fiber-optic cables. Such cables  
16 can also carry Internet signals which now allows VERIZON to offer broadband access as  
17 well. With the mention of cables comes the thought of television, and VERIZON is now  
18 pursuing avenues in that realm to offer video, data, and television services which appears to  
19 be coming at the expense of cable providers. All of these new efforts are part of  
20 VERIZON's FiOS effort, which is a telecom service offered over fiber-optic lines  
21 exclusively by VERIZON.

22 3. To successfully compete against the cable providers, VERIZON substantially  
23 reduced its labor costs and consequently placed the burden on a smaller number of  
24 employees to "get the job done." An employer's obligation to pay its employees wages is  
25 more than a matter of private concern between the parties. That obligation is founded on a  
26 compelling public policy judgment that employees are entitled to work a livable number of  
27 hours at a livable wage. In addition, statutes and regulations that compel employers to pay  
28 overtime relate to fundamental issues of social welfare worthy of protection. The

1 requirement to pay overtime wages extends beyond the benefits individual workers receive  
2 because overtime wages discourage employers from concentrating work in a few  
3 overburdened hands and encourage employers to instead hire additional employees.  
4 Especially in today's economic climate, the importance of spreading available work to  
5 reduce unemployment cannot be overestimated.

6 4. As part of VERIZON's business, DEFENDANT employs a fleet of so called  
7 "First Level Managers," "Local Managers" and/or "Field Managers" whose primary job duty  
8 is merely relaying information back and forth between the technicians and management.  
9 Field Managers are primarily engaged in a core, day-to-day business activity of VERIZON  
10 to relay information back and forth between the technicians and management acting as  
11 information liaisons between the parties. In addition, these employees are also engaged in  
12 clerical tasks, paperwork, and performing safety and quality inspections (spot checks) with a  
13 detailed checklist provided by DEFENDANT.

14 5. To perform their job duties, the Field Managers do not engage in a  
15 supervisory role given the constraints placed upon them by company policy. Field  
16 Managers did not determine what work was to be done by the technicians or in what time  
17 frame. Work assignments were generated by computer and given to the technicians by  
18 DEFENDANT. Instead, the Field Managers only retained a minor role in readjusting work  
19 assignments in accordance with DEFENDANT's strict, uniform corporate guidelines.  
20 Furthermore, the Field Managers performed required safety and quality inspections of the  
21 technicians in the field using a pre-written checklist. These inspections do not involve  
22 subjective assignments, but only discrete yes-or-no answers and the Field Managers were  
23 not involved in writing or altering the checklists. In addition, the circumstances of these job  
24 duties required that the Field Managers regularly remained on-call during off hours in the  
25 evenings and on weekends. Field Managers also did not have a distinct role in training the  
26 technicians or determining what training they were to receive. Technicians received their  
27 primary training from DEFENDANT's training center as well as online computer programs.  
28 Field Managers also did not determine the tools and equipment to be used on the job.

1 Materials were either provided directly by DEFENDANT or the Field Managers were  
2 instructed from upper management what items to order from suppliers subject to  
3 DEFENDANT's approval. Lastly, the Field Mangers did not have the authority to hire, fire,  
4 or promote technicians, determine their pay rates or benefits, or give raises – they were  
5 unable to make employment-related, personnel decisions. Consequently, the Field Managers  
6 did not have the authority to decide whether or not a technician could be disciplined for an  
7 infraction. Disciplinary decisions were made by the Human Resources department or  
8 dictated by company policies, including the technicians' collective bargaining agreement.  
9 Overall, the Field Managers' recommendations are given little, if any, weight on all the  
10 above issues. As a result, the Field Managers are engaged in a type of work that requires no  
11 exercise of independent judgment or discretion as to any matter of significance. Therefore,  
12 the PLAINTIFF and all the other Field Managers are "managers" in name only because they  
13 do not have managerial duties or authority and should therefore have been properly  
14 classified as non-exempt employees. These employees, collectively, all are referred to  
15 herein as "Field Managers." This Action is brought on behalf of the PLAINTIFF and all  
16 those employees of DEFENDANT (the "CALIFORNIA CLASS") in California who worked  
17 for DEFENDANT as a Field Manager during the CLASS PERIOD ("CLASS" or "Class  
18 Members").

19         6. Plaintiff Ulysses Aburto ("PLAINTIFF") was employed by DEFENDANT in  
20 California as a Technician III from February 2009 to June 2000, Equipment Maintainer from  
21 June 2000 to Marckh 2003, Central Office Equipment Maintainer from March 2003 to June  
22 2005, and a First Level Manager or Field Manager from June 2005 to February 2009.

23         7. The position of Field Manager was represented by DEFENDANT to the  
24 PLAINTIFF and the other Field Managers as an exempt and salaried position.

25         8. For DEFENDANT's business, the Class Members functioned as working  
26 members in DEFENDANT's California FiOS division. As defined by DEFENDANT's  
27 comprehensive corporate policies and procedures, the primary job duty of the Class  
28 Members employed by VERIZON was and is to relay information back and forth between

1 the technicians and management in accordance with DEFENDANT's established specific  
2 procedures and protocols which govern and control every aspect of the work performed by  
3 the Field Managers. These standardized procedures mirror the realities of the workplace  
4 evidencing a uniformity of work among the Field Managers and negate any exercise of  
5 independent judgment and discretion as to any matter of significance.

6 9. The work schedule for Field Managers was set by DEFENDANT. Generally,  
7 the Class Members work twelve (12) to fourteen (14) hours each workday and twenty (20)  
8 to forty (40) hours of overtime each workweek.

9 10. DEFENDANT has not established an alternative workweek election for Field  
10 Managers for twelve (12) to fourteen (14) hour workdays.

11 11. PLAINTIFF and the other Field Managers were not provided with overtime  
12 compensation and other benefits required by law as a result of being classified as "exempt"  
13 by DEFENDANT.

14 12. PLAINTIFF brings this Class Action on behalf of himself and a California  
15 Class consisting of all those employees who are or previously were employed by Defendant  
16 Verizon California Inc. as a Field Manager in California (the "CALIFORNIA CLASS")  
17 during the period beginning on the date four (4) years before the filing of this Action and  
18 ending on the date as determined by the Court (the "CALIFORNIA CLASS PERIOD").

19 13. As a matter of company policy, practice, and procedure, DEFENDANT has  
20 unlawfully, unfairly and/or deceptively classified every Field Manager as exempt based on  
21 job title alone, failed to pay the required overtime compensation and otherwise failed to  
22 comply with all applicable labor laws with respect to these Field Managers.

23 14. The agents, servants, and/or employees of DEFENDANT and each of them  
24 acting on behalf of DEFENDANT acted within the course and scope of his, her or its  
25 authority as the agent, servant, and/or employee of DEFENDANT, and personally  
26 participated in the conduct alleged herein on behalf of DEFENDANT with respect to the  
27 conduct alleged herein. Consequently, DEFENDANT is jointly and severally liable to the  
28 PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss sustained as

1 a proximate result of the conduct of DEFENDANT's agents, servants, and/or employees.

2  
3 **THE CONDUCT**

4 15. The primary duty required of the Field Managers as defined by DEFENDANT  
5 is executed by the Field Managers through the performance of non-exempt labor within a  
6 defined skill set.

7 16. Although the PLAINTIFF and the other Field Managers primarily performed  
8 non-exempt labor, DEFENDANT instituted a blanket classification policy, practice and  
9 procedure by which all of these Field Managers were classified as exempt from overtime  
10 compensation, meal breaks and rest breaks. By reason of this uniform exemption practice,  
11 policy and procedure applicable to the PLAINTIFF and the other Field Managers who  
12 performed this non-exempt labor, DEFENDANT committed acts of unfair competition in  
13 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the  
14 "UCL"), by engaging in a company-wide policy, practice and procedure which failed to  
15 properly classify the PLAINTIFF and the other Field Managers and thereby failed to pay  
16 them overtime wages for documented overtime hours worked and provide them with all  
17 legally required meal and rest breaks. The proper classification of these employees is  
18 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the  
19 obligation to meet this burden, DEFENDANT failed to pay all required overtime  
20 compensation for work performed by the members of the CALIFORNIA CLASS and  
21 violated the California Labor Code and regulations promulgated thereunder as herein  
22 alleged. In addition, DEFENDANT failed to provide all of the legally required meal and  
23 rest breaks to the PLAINTIFF and the other Field Managers as required by the applicable  
24 Wage Order and Labor Code. During the CLASS PERIOD, DEFENDANT did not have a  
25 policy or practice which provided meal and rest breaks to the PLAINTIFF and the other  
26 Field Managers. As a result, DEFENDANT's failure to provide the PLAINTIFF and the  
27 CALIFORNIA CLASS with all legally required meal and rest breaks is evidenced by  
28 DEFENDANT's business records which contain no record of these breaks.

1           17.     DEFENDANT, as a matter of law, has the burden of proving that (a)  
2 employees are properly classified as exempt and that (b) DEFENDANT otherwise complies  
3 with applicable laws. Other than the initial classification of the PLAINTIFF and the other  
4 Field Managers as exempt from being paid overtime based on job title alone, DEFENDANT  
5 had no business policy, practice, or procedure to ensure that the PLAINTIFF and the other  
6 Field Managers were properly classified as exempt, and in fact, as a matter of corporate  
7 policy erroneously and unilaterally classified all the Class Members as exempt based on job  
8 title alone.

9           18.     During their employment with DEFENDANT, the PLAINTIFF and the other  
10 Field Managers, primarily performed non-exempt job duties, but were nevertheless  
11 classified by DEFENDANT as exempt from overtime pay and worked more than eight (8)  
12 hours a day, forty (40) hours a week, and/or on the seventh (7th) consecutive day of a  
13 workweek.

14           19.     PLAINTIFF and the other Field Managers employed by DEFENDANT were  
15 not primarily engaged in work of a type that was or now is directly related to the  
16 management or general business operations of the employer's customers, when giving these  
17 words a fair but narrow construction. PLAINTIFF and the other Field Managers employed  
18 by DEFENDANT were also not primarily engaged in work of a type that was or now is  
19 performed at the level of the policy or management of DEFENDANT. PLAINTIFF and the  
20 other Field Managers employed by DEFENDANT were also not primarily engaged in work  
21 requiring knowledge of an advanced type in a field or science or learning customarily  
22 acquired by a prolonged course of specialized intellectual instruction and study, but rather  
23 their work primarily involves the performance of routine mental, manual, and/or physical  
24 processes. PLAINTIFF and the other Field Managers employed by DEFENDANT were  
25 also not primarily engaged in work that is predominantly intellectual and varied in character,  
26 but rather is routine mental, manual, mechanical, and/or physical work that is of such  
27 character that the output produced or the result accomplished can be standardized in relation  
28 to a given period of time. The work of a Field Manager of DEFENDANT was work

1 wherein the PLAINTIFF and the members of the CALIFORNIA CLASS were primarily  
2 engaged in the day-to-day business of VERIZON to relay information back and forth  
3 between the technicians and management acting as information liaisons between the parties  
4 in strict accordance with the protocols, policies and operations established by  
5 DEFENDANT.

6         20. The fact that the work of these employees may have involved work using a  
7 specialized skill set or technical abilities in a defined technical area does not mean that the  
8 PLAINTIFF or the other Field Managers employed by DEFENDANT are exempt from  
9 overtime wages. Indeed, the exercise of discretion and independent judgment must be more  
10 than the use of a highly technical skill set described in a manual or other sources. The work  
11 that the PLAINTIFF and the other Field Managers employed by DEFENDANT was and are  
12 primarily engaged in performing day-to-day communication and clerical activities is the  
13 work that is required to be performed as part of the day-to-day-business activity of  
14 DEFENDANT. As a result, the PLAINTIFF and the other Field Managers employed by  
15 DEFENDANT were primarily engaged in work that falls on the production or the non-  
16 exempt administrative sale side of the administrative/production worker dichotomy and  
17 should have been properly classified as non-exempt employees.

18         21. The primary job duty of the PLAINTIFF and the other Field Managers  
19 employed by DEFENDANT was and is relaying information back and forth between the  
20 technicians and management. Field Managers are classified as exempt from California  
21 overtime and related laws by DEFENDANT, however, these employees do not have  
22 managerial duties or authority and are therefore managers in name only. Field Managers  
23 perform these ongoing day-to-day communication and clerical activities because they have a  
24 minimal role in supervising their technicians and have no authority to make employment-  
25 related decisions. Furthermore, the Field Managers are tightly controlled by company  
26 policy and by their supervisors, do not exercise discretion or independent judgment as to  
27 matters of significance, and their job duties are not directly related to DEFENDANT's  
28 management policies or general business operation.

22. PLAINTIFF and all members of the CALIFORNIA CLASS are and were uniformly classified and treated by DEFENDANT as exempt at the time of hire and thereafter, DEFENDANT failed to take the proper steps to determine whether the PLAINTIFF, and the members of the CALIFORNIA CLASS, were properly classified under the applicable Industrial Welfare Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510, *et seq.* as exempt from applicable California labor laws. Since DEFENDANT affirmatively and wilfully misclassified the PLAINTIFF and the members of the CALIFORNIA CLASS in compliance with California labor laws, DEFENDANT's practices violated and continue to violate California law. In addition, DEFENDANT acted deceptively by falsely and fraudulently telling the PLAINTIFF and each member of the CALIFORNIA CLASS that they were exempt from overtime pay when DEFENDANT knew or should have known that this statement was false and not based on known facts. DEFENDANT also acted unfairly by violating the California labor laws, and as a result of this policy and practice, DEFENDANT also violated the UCL. In doing so, DEFENDANT cheated the competition by paying the CALIFORNIA CLASS less than the amount competitors paid who complied with the law and cheated the CALIFORNIA CLASS by not paying them in accordance with California law.

23. DEFENDANT also failed to provide and still fails to provide the PLAINTIFF and the other Field Managers with a wage statement in writing that accurately sets forth gross wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the PLAINTIFF and the other Field Managers. This conduct violates California Labor Code § 226. The pay stub also does not accurately display anywhere the PLAINTIFF's and the other Field Managers' overtime hours and applicable rates of overtime pay for the pay period.

24. By reason of this uniform conduct applicable to the PLAINTIFF and all the CALIFORNIA CLASS members, DEFENDANT committed acts of unfair competition in violation of the California Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the "UCL"), by engaging in a company-wide policy and procedure which failed to correctly

1 classify the PLAINTIFF and the CALIFORNIA CLASS of Field Managers as non-exempt.  
2 The proper classification of these employees is DEFENDANT's burden. As a result of  
3 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT  
4 failed to properly calculate and/or pay all required overtime compensation for work  
5 performed by the members of the CALIFORNIA CLASS and violated the applicable Wage  
6 Order, the California Labor Code and the regulations promulgated thereunder as herein  
7 alleged.

### 8 9 THE UCL REMEDIES

10 25. As a result of DEFENDANT's UCL violation, the PLAINTIFF, on behalf  
11 of himself and the CALIFORNIA CLASS, seeks restitutionary disgorgement of  
12 DEFENDANT's ill-gotten gains into a fluid fund in order to provide restitution of all the  
13 money that DEFENDANT was required by law to pay, but failed to pay, to the PLAINTIFF  
14 and all the other CALIFORNIA CLASS members. PLAINTIFF also seeks all other relief  
15 available to him and the other Field Managers located in California under California law.  
16 PLAINTIFF also seeks declaratory relief finding that the employment practices and policies  
17 of DEFENDANT violate California law.

### 18 19 THE CALIFORNIA CLASS

20 26. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and  
21 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200 *et seq.* (the  
22 "UCL") as a Class Action, pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), on behalf of a  
23 California Class, defined as all employees who are or previously were employed by  
24 Defendant Verizon California Inc. as a Field Manager as hereinabove defined in California  
25 during the period beginning on the date four (4) years before the filing of this Action and  
26 ending on the date as determined by the Court ("CALIFORNIA CLASS").

27 27. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
28 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted

1 accordingly.

2 28. DEFENDANT, as a matter of corporate policy, practice and procedure, and in  
3 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage  
4 Order Requirements, and the applicable provisions of California law, intentionally,  
5 knowingly, and wilfully, engaged in a practice whereby DEFENDANT unfairly, unlawfully,  
6 and deceptively instituted a practice to ensure that the employees employed in a Field  
7 Manager position were not properly classified as non-exempt from the requirements of  
8 California Labor Code §§ 510, *et seq.*

9 29. DEFENDANT has the burden of proof that each and every employee is  
10 properly classified as exempt from the requirements of the Cal. Lab. Code §§ 510, *et seq.*  
11 DEFENDANT, however, as a matter of uniform and systematic policy and procedure had in  
12 place during the CALIFORNIA CLASS PERIOD and still has in place a policy and practice  
13 that misclassifies the CALIFORNIA CLASS members as exempt. DEFENDANT's uniform  
14 policy and practice in place at all times during the CALIFORNIA CLASS PERIOD and  
15 currently in place is to systematically classify each and every CALIFORNIA CLASS  
16 member as exempt from the requirements of the California Labor Code §§ 510, *et seq.* This  
17 common business practice applicable to each and every CALIFORNIA CLASS member can  
18 be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal.  
19 Business & Professions Code §17200 *et seq.* (the "UCL") as causation, damages, and  
20 reliance are not elements of this claim.

21 30. At no time before, during or after the PLAINTIFF's employment with  
22 DEFENDANT was any Field Manager reclassified as non-exempt from the applicable  
23 requirements of California Labor Code §§ 510, *et seq.* after each CALIFORNIA CLASS  
24 member was initially, uniformly, and systematically classified as exempt upon being hired.

25 31. Any individual declarations of any employees offered at this time purporting  
26 to indicate that one or more Field Manager may have been properly classified is of no force  
27 or affect absent contemporaneous evidence that DEFENDANT's uniform system did not  
28 misclassify the PLAINTIFF and the other Field Managers as exempt pursuant to Cal. Lab.

1 Code §§ 510, *et seq.* Absent proof of such a contemporaneous system, DEFENDANT's  
2 business practice is uniformly unlawful, unfair and/or deceptive under the UCL and may be  
3 so adjudicated on a class-wide basis. As a result of the UCL violations, the PLAINTIFF and  
4 the CALIFORNIA CLASS members are entitled to compel DEFENDANT to provide  
5 restitutionary disgorgement of their ill-gotten gains into a fluid fund in order to restitute  
6 these funds to the PLAINTIFF and the CALIFORNIA CLASS members according to proof.

7 32. The CALIFORNIA CLASS is so numerous that joinder of all Field Managers  
8 is impracticable.

9 33. Common questions of law and fact exist as to members of the CALIFORNIA  
10 CLASS, including, but not limited, to the following:

- 11 (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof.  
12 Code § 17200 *et seq.* (the "UCL"), by unlawfully, unfairly and/or  
13 deceptively having in place company policies, practices and procedures  
14 that uniformly misclassified the PLAINTIFF and the members of the  
15 CALIFORNIA CLASS as exempt;
- 16 (b) Committing an act of unfair competition in violation of the UCL, by  
17 unlawfully, unfairly, and/or deceptively failing to have in place a  
18 company policy, practice and procedure that accurately determined the  
19 amount of working time spent by the PLAINTIFF and the members of  
20 the CALIFORNIA CLASS performing non-exempt labor;
- 21 (c) Committing an act of unfair competition in violation of the UCL, by  
22 having in place a company policy, practice and procedure that failed to  
23 reclassify as non-exempt those members of the CALIFORNIA CLASS  
24 whose actual job duties are primarily comprised of non-exempt job  
25 functions;
- 26 (d) Committing an act of unfair competition in violation of the UCL, by  
27 violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct  
28 overtime pay to the PLAINTIFF and the members of the

CALIFORNIA CLASS who were improperly classified as exempt, and retaining the unpaid overtime to the benefit of DEFENDANT;

- (e) Committing an act of unfair competition in violation of the UCL, by failing to provide all mandatory meal and/or rest periods to the PLAINTIFF and the Class Members;
- (f) Committing an act of unfair competition in violation of the UCL, by violating Cal. Lab. Code § 226, by failing to provide the PLAINTIFF and the members of the CALIFORNIA CLASS with an accurate itemized statement in writing showing the gross wages earned, the net wages earned, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; and,
- (g) Committing an act of unfair competition in violation of the UCL, by violating the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §201, *et seq.*, by failing to pay the correct overtime wages to the PLAINTIFF and the members of the CALIFORNIA CLASS who were improperly classified as exempt as legally required by the FLSA, and retaining the unpaid overtime to the benefit of DEFENDANT.

34. This Class Action meets the statutory prerequisites for the maintenance of a Class Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- (a) The persons who comprise the CALIFORNIA CLASS are so numerous that the joinder of all such persons is impracticable and the disposition of their claims as a class will benefit the parties and the Court;
- (b) Nearly all factual, legal, statutory, and declaratory relief issues that are raised in this Complaint are common to the CALIFORNIA CLASS will apply uniformly to every member of the CALIFORNIA CLASS;
- (c) The claims of the representative PLAINTIFF are typical of the claims of each member of the CALIFORNIA CLASS. PLAINTIFF, like all

1 the other members of the CALIFORNIA CLASS, was initially  
2 classified as exempt upon hiring based on the defined corporate  
3 policies and practices and labored under DEFENDANT's systematic  
4 procedure that failed to properly classify the PLAINTIFF and the  
5 members of the CALIFORNIA CLASS. PLAINTIFF sustained  
6 economic injury as a result of DEFENDANT's employment practices.  
7 PLAINTIFF and the members of the CALIFORNIA CLASS were and  
8 are similarly or identically harmed by the same unlawful, deceptive,  
9 unfair and pervasive pattern of misconduct engaged in by  
10 DEFENDANT by deceptively advising all Field Managers that they  
11 were exempt from overtime wages based on the defined corporate  
12 policies and practices, and unfairly failing to pay overtime to these  
13 employees who were improperly classified as exempt; and,

14 (d) The representative PLAINTIFF will fairly and adequately represent and  
15 protect the interest of the CALIFORNIA CLASS, and have retained  
16 counsel who are competent and experienced in Class Action litigation.  
17 There are no material conflicts between the claims of the representative  
18 PLAINTIFF and the members of the CALIFORNIA CLASS that would  
19 make class certification inappropriate. Counsel for the CALIFORNIA  
20 CLASS will vigorously assert the claims of all employees in the  
21 CALIFORNIA CLASS.

22 35. In addition to meeting the statutory prerequisites to a Class Action, this Action  
23 is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3),  
24 in that:

25 (a) Without class certification and determination of declaratory, statutory  
26 and other legal questions within the class format, prosecution of  
27 separate actions by individual members of the CALIFORNIA CLASS  
28 will create the risk of:

1) Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA CLASS which would establish incompatible standards of conduct for the parties opposing the CALIFORNIA CLASS; and/or,

2) Adjudication with respect to individual members of the CALIFORNIA CLASS which would as a practical matter be dispositive of interests of the other members not party to the adjudication or substantially impair or impede their ability to protect their interests.

(b) The parties opposing the CALIFORNIA CLASS have acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, making appropriate class-wide relief with respect to the CALIFORNIA CLASS as a whole in that DEFENDANT uniformly classified and treated the Field Managers as exempt and, thereafter, uniformly failed to take proper steps to determine whether the Field Managers were properly classified as exempt, and thereby denied these employees overtime wages as required by law;

1) With respect to the First Cause of Action, the final relief on behalf of the CALIFORNIA CLASS sought does not relate exclusively to restitution because through this claim the PLAINTIFF seeks declaratory relief holding that DEFENDANT's policy and practices constitute unfair competition, along with incidental equitable relief as may be necessary to remedy the conduct declared to constitute unfair competition;

(c) Common questions of law and fact exist as to the members of the CALIFORNIA CLASS, with respect to the practices and violations of California law as listed above, and predominate over any question

1 affecting only individual members, and a Class Action is superior to  
2 other available methods for the fair and efficient adjudication of the  
3 controversy, including consideration of:

- 4 1) The interests of the members of the CALIFORNIA CLASS in  
5 individually controlling the prosecution or defense of separate  
6 actions in that the substantial expense of individual actions will  
7 be avoided to recover the relatively small amount of economic  
8 losses sustained by the individual CALIFORNIA CLASS  
9 members when compared to the substantial expense and burden  
10 of individual prosecution of this litigation;
- 11 2) Class certification will obviate the need for unduly duplicative  
12 litigation that would create the risk of:
- 13 A. Inconsistent or varying adjudications with respect to  
14 individual members of the CALIFORNIA CLASS, which  
15 would establish incompatible standards of conduct for  
16 DEFENDANT; and/or,
- 17 B. Adjudications with respect to individual members of the  
18 CALIFORNIA CLASS would as a practical matter be  
19 dispositive of the interests of the other members not  
20 parties to the adjudication or substantially impair or  
21 impede their ability to protect their interests;
- 22 3) In the context of wage litigation because as a practical matter a  
23 substantial number of individual class members will avoid  
24 asserting their legal rights out of fear of retaliation by  
25 DEFENDANT, which may adversely affect an individual's job  
26 with DEFENDANT or with a subsequent employer, the Class  
27 Action is the only means to assert their claims through a  
28 representative; and,

1                   4)     A Class Action is superior to other available methods for the fair  
2                   and efficient adjudication of this litigation because class  
3                   treatment will obviate the need for unduly and unnecessary  
4                   duplicative litigation that is likely to result in the absence of  
5                   certification of this Action pursuant to Fed. R. Civ. Proc.  
6                   23(b)(2) and/or (3).

7           36.     This Court should permit this Action to be maintained as a Class Action  
8 pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), because:

- 9           (a)     The questions of law and fact common to the CALIFORNIA CLASS  
10           predominate over any question affecting only individual members  
11           because DEFENDANT's employment practices were uniform and  
12           systematically applied with respect to the CALIFORNIA CLASS;  
13           (b)     A Class Action is superior to any other available method for the fair  
14           and efficient adjudication of the claims of the members of the  
15           CALIFORNIA CLASS because in the context of employment litigation  
16           a substantial number of individual Class members will avoid asserting  
17           their rights individually out of fear of retaliation or adverse impact on  
18           their employment;  
19           (c)     The members of the CALIFORNIA CLASS are so numerous that it is  
20           impractical to bring all members of the CALIFORNIA CLASS before  
21           the Court;  
22           (d)     PLAINTIFF, and the other CALIFORNIA CLASS members, will not  
23           be able to obtain effective and economic legal redress unless the action  
24           is maintained as a Class Action;  
25           (e)     There is a community of interest in obtaining appropriate legal and  
26           equitable relief for the acts of unfair competition, statutory violations  
27           and other improprieties, and in obtaining adequate compensation for the  
28           injuries which DEFENDANT's actions have inflicted upon the

1 CALIFORNIA CLASS;

2 (f) There is a community of interest in ensuring that the combined assets of  
3 DEFENDANT are sufficient to adequately compensate the members of  
4 the CALIFORNIA CLASS for the injuries sustained;

5 (g) DEFENDANT had acted or refused to act on grounds generally  
6 applicable to the CALIFORNIA CLASS, thereby making final class-  
7 wide relief appropriate with respect to the CALIFORNIA CLASS as a  
8 whole;

9 (h) The members of the CALIFORNIA CLASS are readily ascertainable  
10 from the business records of DEFENDANT. The CALIFORNIA  
11 CLASS consists of all DEFENDANT's Field Managers employed in  
12 California during the CALIFORNIA CLASS PERIOD; and,

13 (i) Class treatment provides manageable judicial treatment calculated to  
14 bring a efficient and rapid conclusion to all litigation of all wage and  
15 hour related claims arising out of the conduct of DEFENDANT as to  
16 the members of the CALIFORNIA CLASS.

17 37. DEFENDANT maintains records from which the Court can ascertain and  
18 identify by name and job title, each of DEFENDANT's employees who have been  
19 systematically, intentionally and uniformly subjected to DEFENDANT's corporate policy,  
20 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the  
21 Complaint to include any additional job titles of similarly situated employees when they  
22 have been identified.

23  
24 **THE CALIFORNIA LABOR SUB-CLASS**

25 38. PLAINTIFF further brings the Second and Third Causes of Action on  
26 behalf of a sub-class which consists of all members of the CALIFORNIA CLASS who were  
27 employed by DEFENDANT during the period beginning on the date three (3) years prior to  
28 the filing of the action and ending on the date as determined by the Court (the

1 "CALIFORNIA LABOR SUB-CLASS PERIOD"), who performed work in excess of eight  
2 (8) hours in one day and/or forty (40) hours in one week and/or hours on the seventh (7th)  
3 consecutive day of a workweek and did not receive overtime compensation (the  
4 "CALIFORNIA LABOR SUB-CLASS") pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3).

5 39. DEFENDANT, as a matter of corporate policy, practice and procedure,  
6 and in violation of the applicable California Labor Code ("Labor Code"), and Industrial  
7 Welfare Commission ("IWC") Wage Order Requirements intentionally, knowingly, wilfully,  
8 and systematically misclassified the PLAINTIFF and the other members of the  
9 CALIFORNIA CLASS and the CALIFORNIA LABOR SUB-CLASS as exempt from  
10 overtime wages and other labor laws based on DEFENDANT's comprehensive policies and  
11 procedures in order to avoid the payment of overtime wages by misclassifying their  
12 positions as exempt from overtime wages and other labor laws. To the extent equitable  
13 tolling operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against  
14 DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

15 40. DEFENDANT has intentionally and deliberately created a multi-tiered  
16 management structure with at least seven levels. PLAINTIFF and the other Field Managers  
17 are at the bottom of the pyramid, acting as low-level functionaries whose primary job duty is  
18 relaying information back and forth between the technicians and management. The job  
19 levels and job titles such as "First Level Manager," "Level One Manager," and "Field  
20 Manager" were distributed in order to create the superficial appearance of a number of  
21 unique jobs, when in fact, these jobs are substantially similar and can be easily grouped  
22 together for the purpose of determining whether they were all misclassified. One of  
23 DEFENDANT's purposes in creating and maintaining this multi-level job classification  
24 scheme is to create an artificial barrier to discovery and class certification for all employees  
25 similarly misclassified as exempt. DEFENDANT has uniformly misclassified these  
26 CALIFORNIA LABOR SUB-CLASS members as exempt and denied them overtime wages  
27 and other benefits to which non-exempt employees are entitled in order to unfairly cheat the  
28 competition and unlawfully profit.

1           41.     DEFENDANT maintains records from which the Court can ascertain and  
2 identify by job title each of DEFENDANT's employees who as CALIFORNIA LABOR  
3 SUB-CLASS members have been systematically, intentionally and uniformly misclassified  
4 as exempt as a matter of DEFENDANT's corporate policy, practices and procedures.  
5 PLAINTIFF will seek leave to amend the Complaint to include these additional job titles  
6 when they have been identified.

7           42.     The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
8 members is impracticable.

9           43.     Common questions of law and fact exist as to members of the CALIFORNIA  
10 LABOR SUB-CLASS, including, but not limited, to the following:

- 11           (a)     Whether DEFENDANT unlawfully failed to pay overtime  
12                    compensation to members of the CALIFORNIA LABOR SUB-CLASS  
13                    in violation of the California Labor Code and California regulations  
14                    and the applicable California Wage Order;
- 15           (b)     Whether the members of the CALIFORNIA LABOR SUB-CLASS are  
16                    non-exempt employees entitled to overtime compensation for overtime  
17                    hours worked under the overtime pay requirements of California law;
- 18           (c)     Whether DEFENDANT's policy and practice of classifying the  
19                    CALIFORNIA LABOR SUB-CLASS members as exempt from  
20                    overtime compensation and failing to pay the CALIFORNIA LABOR  
21                    SUB-CLASS members overtime violate applicable provisions of  
22                    California law;
- 23           (d)     Whether DEFENDANT unlawfully failed to keep and furnish  
24                    CALIFORNIA LABOR SUB-CLASS members with accurate records  
25                    of overtime hours worked;
- 26           (e)     Whether DEFENDANT's policy and practice of failing to pay  
27                    members of the CALIFORNIA LABOR SUB-CLASS all wages when  
28                    due within the time required by law after their employment ended

1 violates California law; and,

2 (f) The proper measure of damages and penalties owed to the members of  
3 the CALIFORNIA LABOR SUB-CLASS.

4 44. DEFENDANT, as a matter of corporate policy, practice and procedure,  
5 erroneously classified all Field Managers as exempt from overtime wages and other labor  
6 laws. All Field Managers, including the PLAINTIFF, performed the same primary  
7 functions and were paid by DEFENDANT according to uniform and systematic company  
8 procedures, which, as alleged herein above, failed to correctly pay overtime compensation.  
9 This business practice was uniformly applied to each and every member of the  
10 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be  
11 adjudicated on a class-wide basis.

12 45. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-  
13 CLASS under California law by:

14 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby  
15 failing to pay the PLAINTIFF and the members of the CALIFORNIA  
16 LABOR SUB-CLASS the correct overtime pay for a workday longer  
17 than eight (8) hours, a workweek longer than forty (40) hours, and/or  
18 all hours worked on the seventh (7th) consecutive day of a workweek  
19 for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

20 (b) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that  
21 when an employee is discharged or quits from employment, the  
22 employer must pay the employee all wages due without abatement, by  
23 failing to tender full payment and/or restitution of wages owed or in the  
24 manner required by California law to the members of the  
25 CALIFORNIA LABOR SUB-CLASS who have terminated their  
26 employment; and,

27 (d) Violating Cal. Lab. Code § 226, by failing to provide the PLAINTIFF  
28 and the members of the CALIFORNIA LABOR SUB-CLASS who

1           were improperly classified as exempt with an accurate itemized  
2           statement in writing showing the gross wages earned, the net wages  
3           earned, all applicable hourly rates in effect during the pay period and  
4           the corresponding number of hours worked at each hourly rate by the  
5           employee.

6           46.    This Class Action meets the statutory prerequisites for the maintenance of a  
7   Class Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3), in that:

- 8           (a)    The persons who comprise the CALIFORNIA LABOR SUB-CLASS  
9           exceed are so numerous that the joinder of all such persons is  
10          impracticable and the disposition of their claims as a class will benefit  
11          the parties and the Court;
- 12          (b)    Nearly all factual, legal, statutory, and declaratory relief issues that are  
13          raised in this Complaint are common to the CALIFORNIA LABOR  
14          SUB-CLASS and will apply uniformly to every member of the  
15          CALIFORNIA LABOR SUB-CLASS;
- 16          (c)    The claims of the representative PLAINTIFF are typical of the claims  
17          of each member of the CALIFORNIA LABOR SUB-CLASS.  
18          PLAINTIFF, like all the other members of the CALIFORNIA LABOR  
19          SUB-CLASS, was improperly classified as exempt and denied  
20          overtime pay as a result of DEFENDANT's systematic classification  
21          practices. PLAINTIFF and all the other members of the CALIFORNIA  
22          LABOR SUB-CLASS sustained economic injuries arising from  
23          DEFENDANT's violations of the laws of California; and,
- 24          (d)    The representative PLAINTIFF will fairly and adequately represent and  
25          protect the interest of the CALIFORNIA LABOR SUB-CLASS, and  
26          has retained counsel who are competent and experienced in Class  
27          Action litigation. There are no material conflicts between the claims of  
28          the representative PLAINTIFF and the members of the CALIFORNIA

1 LABOR SUB-CLASS that would make class certification  
2 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS  
3 will vigorously assert the claims of all Class Members.

4 47. In addition to meeting the statutory prerequisites to a Class Action, this Action  
5 is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3),  
6 in that:

7 (a) Without class certification and determination of declaratory, statutory  
8 and other legal questions within the class format, prosecution of  
9 separate actions by individual members of the CALIFORNIA LABOR  
10 SUB-CLASS will create the risk of:

- 11 1) Inconsistent or varying adjudications with respect to individual  
12 members of the CALIFORNIA LABOR SUB-CLASS which  
13 would establish incompatible standards of conduct for the  
14 parties opposing the CALIFORNIA LABOR SUB-CLASS; or,  
15 2) Adjudication with respect to individual members of the  
16 CALIFORNIA LABOR SUB-CLASS which would as a  
17 practical matter be dispositive of interests of the other members  
18 not party to the adjudication or substantially impair or impede  
19 their ability to protect their interests.

20 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have  
21 acted or refused to act on grounds generally applicable to the  
22 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide  
23 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a  
24 whole in that DEFENDANT uniformly classified and treated the Field  
25 Managers as exempt and, thereafter, uniformly failed to take proper  
26 steps to determine whether the Field Managers were properly classified  
27 as exempt, and thereby denied these employees overtime wages as  
28 required by law;

1 (c) Common questions of law and fact predominate as to the members of  
2 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices  
3 and violations of California law as listed above, and predominate over  
4 any question affecting only individual members, and a Class Action is  
5 superior to other available methods for the fair and efficient  
6 adjudication of the controversy, including consideration of:

- 7 1) The interests of the members of the CALIFORNIA LABOR  
8 SUB-CLASS in individually controlling the prosecution or  
9 defense of separate actions in that the substantial expense of  
10 individual actions will be avoided to recover the relatively small  
11 amount of economic losses sustained by the individual  
12 CALIFORNIA LABOR SUB-CLASS members when compared  
13 to the substantial expense and burden of individual prosecution  
14 of this litigation;
- 15 2) Class certification will obviate the need for unduly duplicative  
16 litigation that would create the risk of:
- 17 A. Inconsistent or varying adjudications with respect to  
18 individual members of the CALIFORNIA LABOR SUB-  
19 CLASS, which would establish incompatible standards of  
20 conduct for DEFENDANT; and/or,
- 21 B. Adjudications with respect to individual members of the  
22 CALIFORNIA LABOR SUB-CLASS would as a  
23 practical matter be dispositive of the interests of the other  
24 members not parties to the adjudication or substantially  
25 impair or impede their ability to protect their interests;
- 26 3) In the context of wage litigation because a substantial number of  
27 individual class members will avoid asserting their legal rights  
28 out of fear of retaliation by DEFENDANT, which may

adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,

- 4) A Class Action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3).

48. This Court should permit this Action to be maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3), because:

- (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual members;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual Class Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the CALIFORNIA LABOR SUB-CLASS before the Court;
- (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations

1 and other improprieties, and in obtaining adequate compensation for the  
2 damages and injuries which DEFENDANT's actions have inflicted  
3 upon the CALIFORNIA LABOR SUB-CLASS;

4 (f) There is a community of interest in ensuring that the combined assets of  
5 DEFENDANT are sufficient to adequately compensate the members of  
6 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

7 (g) DEFENDANT has acted or refused to act on grounds generally  
8 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby  
9 making final class-wide relief appropriate with respect to the  
10 CALIFORNIA LABOR SUB-CLASS as a whole;

11 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily  
12 ascertainable from the business records of DEFENDANT. The  
13 CALIFORNIA LABOR SUB-CLASS consists of those Field Managers  
14 who worked overtime hours and who were not paid overtime; and,

15 (i) Class treatment provides manageable judicial treatment calculated to  
16 bring a efficient and rapid conclusion to all litigation of all wage and  
17 hour related claims arising out of the conduct of DEFENDANT.  
18

#### 19 JURISDICTION AND VENUE

20 49. This Court has jurisdiction over the PLAINTIFF's federal claims pursuant to 28  
21 U.S.C. § 1331 and supplemental jurisdiction of the PLAINTIFF's state law claims pursuant to  
22 28 U.S.C. § 1367.

23 50. Further, with respect to the state law class claims, these state law class claims  
24 are brought as a Class Action pursuant to Fed. R. Civ. Proc, Rule 23 on behalf of a class that  
25 exceeds 100 persons, that involves more than \$5,000,000 in controversy, and where the  
26 citizenship of at least one member of the class is diverse from that of DEFENDANT. As a  
27 result, this Court also has original jurisdiction over the state law class claims under 28  
28 U.S.C. § 1332 (CAFA Jurisdiction).

51. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because: (i) DEFENDANT is subject to personal jurisdiction in this District and therefore resides in this District; (ii) DEFENDANT maintains offices or facilities in this District; and, (iii) DEFENDANT committed the wrongful conduct against members of the CALIFORNIA CLASS in this District.

# **FIRST CAUSE OF ACTION**

## **For Unlawful Business Practices**

**[Cal. Bus. And Prof. Code § 17200 *et seq.*]**

**(By PLAINTIFF and the CALIFORNIA CLASS and against All Defendants)**

52. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 51 of this Complaint.

53. DEFENDANT is a "persons" as that term is defined under Cal. Bus. and Prof. Code § 17021.

54. California Business & Professions Code § 17200 *et seq.* (the "UCL") defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

California Business & Professions Code § 17203.

55. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a business practice which violates California and Federal law, including but not limited to provisions of the Wage Orders, the California Labor Code, the regulations of the Department of Labor, the opinions of the Department of Labor Standards Enforcement, the

1 FLSA, and the Code of Federal Regulations, for which this Court should issue declaratory,  
2 and other equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, as may be necessary  
3 to prevent and remedy the conduct held to constitute unfair competition.

4 56. Throughout the CLASS PERIOD, it was also DEFENDANT's uniform policy  
5 and practice to not provide all legally required meal and rest breaks to the PLAINTIFF and  
6 the Class Members. DEFENDANT's uniform practice requires the PLAINTIFF and the  
7 Class Members to work continuously throughout the workday without being supplied all  
8 meal and/or rest periods in accordance with the number of hours they worked. At all  
9 relevant times during the CLASS PERIOD, DEFENDANT failed to provide any  
10 compensated work time for failing to provide such breaks to the PLAINTIFF and the Class  
11 Members.

12 57. Therefore, the PLAINTIFF demands on behalf of himself and on behalf of  
13 each member of the CLASS, one (1) hour of pay for each workday in which a meal period  
14 was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each  
15 workday in which a second meal period was not timely provided for each ten (10) hours of  
16 work.

17 58. PLAINTIFF further demands on behalf of himself and on behalf of each  
18 member of the CLASS, one (1) hour of pay for each workday in which a rest period was not  
19 timely provided as required by law.

20 59. By and through the unfair and unlawful business practices described herein  
21 above, DEFENDANT has obtained valuable property, money, and services from the  
22 PLAINTIFF, and the other members of the CALIFORNIA CLASS, and has deprived them  
23 of valuable rights and benefits guaranteed by law, all to their detriment and to the benefit of  
24 DEFENDANT so as to allow DEFENDANT to unfairly compete. Declaratory and equitable  
25 relief is necessary to prevent and remedy this unfair competition.

26 60. All the acts described herein as violations of, among other things, the  
27 California Labor Code, California Code of Regulations, the Industrial Welfare Commission  
28 Wage Orders, the FLSA, the Code of Federal Regulations, and the related opinions of the

Department of Labor, are unlawful, are in violation of public policy, are immoral, unethical, oppressive, and unscrupulous, and are likely to deceive employees, as herein alleged, and thereby constitute deceptive, unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code § 17200 *et seq.*

61. PLAINTIFF, and the other members of the CALIFORNIA CLASS, are further entitled to, and do, seek a declaration that the above described business practices are deceptive unfair and/or unlawful.

62. The practices herein alleged presently continue to occur unabated. As a result of the unfair and unlawful business practices described above, the PLAINTIFF, and the other members of the CALIFORNIA CLASS, have suffered legal and economic harm.

## SECOND CAUSE OF ACTION

### **For Failure To Pay Overtime Compensation**

**[Cal. Lab. Code §§ 510, 515.5, 551, 552, 1194 and 1198]**

**(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS)**

63. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 62 of this Complaint.

64. Cal. Lab. Code § 510 states in relevant part:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

65. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven."

66. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his employees to work more than six days in seven."

67. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the overtime rate of compensation required to be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly salary."

68. Cal. Lab. Code § 1194 states:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

69. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

70. In addition, Labor Code Section 558 provides:

- (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
  - (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
  - (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
  - (3) Wages recovered pursuant to this section shall be paid to the affected employee.
- (b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.
- (c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

71. DEFENDANT has intentionally and uniformly designated certain employees as "exempt" employees, by their job title and without regard to DEFENDANT's realistic

1 expectations and actual overall requirements of the job, including the PLAINTIFF and the  
2 other members of the CALIFORNIA LABOR SUB-CLASS who worked on the production  
3 side of DEFENDANT's business. This was done in an illegal attempt to avoid payment of  
4 overtime wages and other benefits in violation of the Cal. Lab. Code and Industrial Welfare  
5 Commission requirements.

6 72. For an employee to be exempt as a bona fide "executive," all the following  
7 criteria must be met and DEFENDANT has the burden of proving that:

- 8 (a) The employee's primary duty must be management of the enterprise, or of a  
9 customarily recognized department or subdivision; and,
- 10 (b) The employee must customarily and regularly direct the work of at least two  
11 (2) or more other employees; and,
- 12 (c) The employee must have the authority to hire and fire, or to command  
13 particularly serious attention to his or her recommendations on such actions  
14 affecting other employees; and,
- 15 (d) The employee must customarily and regularly exercise discretion and  
16 independent judgment; and,
- 17 (e) The employee must be primarily engaged in duties which meet the test of  
18 exemption.

19 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because  
20 they all fail to meet the requirements of being an "executive" within the meaning of the  
21 applicable Wage Order.

22 73. For an employee to be exempt as a bona fide "administrator," all of the  
23 following criteria must be met and DEFENDANT has the burden of proving that:

- 24 (a) The employee must perform office or non-manual work directly related to  
25 management policies or general business operation of the employer; and,
- 26 (b) The employee must customarily and regularly exercise discretion and  
27 independent judgment; and,
- 28 (c) The employee must regularly and directly assist a proprietor or an exempt

1 administrator; or,

2 (d) The employee must perform, under only general supervision, work requiring  
3 special training, experience, or knowledge, or,

4 (e) The employee must execute special assignments and tasks under only general  
5 supervision; and,

6 (f) The employee must be primarily engaged in duties which meet the test of  
7 exemption.

8 No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because  
9 they all fail to meet the requirements for being an "administrator" under the applicable Wage  
10 Order.

11 74. The Industrial Welfare Commission, in Wage Order 4-2001, at section  
12 (1)(A)(3)(h), and Labor Code § 515 also set forth the requirements which must be complied  
13 with to place an employee in the "professional" exempt category. For an employee to be  
14 exempt as a bona fide "professional," all the following criteria must be met and  
15 DEFENDANT has the burden of proving that:

16 (a) The employee is primarily engaged in an occupation commonly recognized as  
17 a learned or artistic profession. For the purposes of this subsection, "learned  
18 or artistic profession" means an employee who is primarily engaged in the  
19 performance of:

20 1) Work requiring knowledge of an advanced type in a field or science or  
21 learning customarily acquired by a prolonged course of specialized  
22 intellectual instruction and study, as distinguished from a general  
23 academic education and from an apprenticeship, and from training in  
24 the performance of routine mental, manual, or physical processes, or  
25 work that is an essential part or necessarily incident to any of the above  
26 work; or,

27 2) Work that is original and creative in character in a recognized field of  
28 artistic endeavor, and the result of which depends primarily on the

invention, imagination or talent of the employee or work that is an essential part of or incident to any of the above work; and,

3) Whose work is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character cannot be standardized in relation to a given period of time.

(b) The employee must customarily and regularly exercise discretion and independent judgment; and,

(c) The employee earns a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment.

No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because they all fail to meet the requirements of being a "professional" within the meaning of the applicable Wage Order.

75. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, do not fit the definition of an exempt executive, administrative, or professional employee because:

(a) They did not work as executives or administrators; and,

(b) The professional exemption does not apply to the PLAINTIFF, nor to the other members of the CALIFORNIA LABOR SUB-CLASS because they did not meet all the applicable requirements to work under the professional exemption for the reasons set forth above in this Complaint.

76. During the CLASS PERIOD, the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, worked more than eight (8) hours in a workday, forty (40) hours in a workweek, and/or worked on the seventh (7th) consecutive day of a workweek.

77. At all relevant times, DEFENDANT failed to pay the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, overtime compensation for the hours they have worked in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and 1198, even though the PLAINTIFF, and the other members of

1 the CALIFORNIA LABOR SUB-CLASS, were regularly required to work, and did in fact  
2 work, overtime hours.

3 78. By virtue of DEFENDANT's unlawful failure to pay additional compensation  
4 to the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, for  
5 their overtime hours, the PLAINTIFF, and the other members of the CALIFORNIA  
6 LABOR SUB-CLASS, have suffered, and will continue to suffer, an economic injury in  
7 amounts which are presently unknown to them and which will be ascertained according to  
8 proof at trial.

9 79. DEFENDANT knew or should have known that the PLAINTIFF, and the  
10 other members of the CALIFORNIA LABOR SUB-CLASS, were misclassified as exempt  
11 and DEFENDANT systematically elected, either through intentional malfeasance or gross  
12 nonfeasance, not to pay them for their overtime labor as a matter of uniform corporate  
13 policy, practice and procedure.

14 80. Therefore, the PLAINTIFF, and the other members of the CALIFORNIA  
15 LABOR SUB-CLASS, request recovery of overtime compensation according to proof,  
16 interest, costs, as well as the assessment of any statutory penalties against DEFENDANT, in  
17 a sum as provided by the Cal. Lab. Code and/or other statutes. To the extent overtime  
18 compensation is determined to be owed to members of the CALIFORNIA LABOR SUB-  
19 CLASS who have terminated their employment, these employees would also be entitled to  
20 waiting time penalties under Labor Code § 203, which penalties are sought herein. Further,  
21 the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, are  
22 entitled to seek and recover statutory costs.

23 81. In performing the acts and practices herein alleged in violation of labor laws  
24 and refusing to provide the requisite overtime compensation, DEFENDANT acted and  
25 continues to act intentionally, oppressively, and maliciously toward the PLAINTIFF, and  
26 toward the other members of the CALIFORNIA LABOR SUB-CLASS, with a conscious  
27 and utter disregard of their legal rights, or the consequences to them, and with the despicable  
28 intent of depriving them of their property and legal rights and otherwise causing them injury

1 in order to increase corporate profits at the expense of the PLAINTIFF and the members of  
2 the CALIFORNIA CLASS.

3 **THIRD CAUSE OF ACTION**

4 **For Failure to Provide Accurate Itemized Statements**

5 **[Cal. Lab. Code § 226]**

6 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS)**

7 82. PLAINTIFF, and the other members of the CALIFORNIA LABOR  
8 SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein,  
9 paragraphs 1 through 81 of this Complaint.

10 83. Cal. Labor Code § 226 provides that an employer must furnish employees  
11 with an "accurate itemized" statement in writing showing:

- 12 (1) gross wages earned,
- 13 (2) total hours worked by the employee, except for any employee whose  
14 compensation is solely based on a salary and who is exempt from payment of  
15 overtime under subdivision (a) of Section 515 or any applicable order of the  
16 Industrial Welfare Commission,
- 17 (3) the number of piecerate units earned and any applicable piece rate if the employee  
18 is paid on a piece-rate basis,
- 19 (4) all deductions, provided that all deductions made on written orders of the  
20 employee may be aggregated and shown as one item,
- 21 (5) net wages earned,
- 22 (6) the inclusive dates of the period for which the employee is paid,
- 23 (7) the name of the employee and his or her social security number, except that by  
24 January 1, 2008, only the last four digits of his or her social security number or an  
25 employee identification number other than a social security number may be shown on  
26 the itemized statement,
- 27 (8) the name and address of the legal entity that is the employer, and
- 28 (9) all applicable hourly rates in effect during the pay period and the corresponding  
number of hours worked at each hourly rate by the employee.

84. At all times relevant herein, DEFENDANT violated Labor Code § 226,  
in that DEFENDANT failed to provide an accurate wage statement in writing that properly  
and accurately itemized the number of hours worked by the PLAINTIFF, and the other  
members of the CALIFORNIA LABOR SUB-CLASS at the effective regular rates of pay  
and the effective overtime rates of pay.

85. DEFENDANT knowingly and intentionally failed to comply with Labor Code  
§ 226, causing damages to the PLAINTIFF, and the other members of the CALIFORNIA

LABOR SUB-CLASS. These damages include, but are not limited to, costs expended calculating the true hours worked and the amount of employment taxes which were not properly paid to state and federal tax authorities. These damages are difficult to estimate. Therefore, the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS may elect to recover liquidated damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent pay period pursuant to Labor Code § 226, in an amount according to proof at the time of trial (but in no event more than \$4,000.00 for the PLAINTIFF and each respective member of the CALIFORNIA LABOR SUB-CLASS herein).

#### **FOURTH CAUSE OF ACTION**

#### **Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* ("FLSA")**

#### **(By PLAINTIFF and the COLLECTIVE CLASS against DEFENDANT)**

86. PLAINTIFF, and the other members of the COLLECTIVE CLASS, reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 85 of this Complaint.

87. DEFENDANT is engaged in communication, business, and transmission between the states, and is, therefore, engaged in commerce within the meaning of 29 U.S.C. § 203(b).

88. The PLAINTIFF further brings the Fourth Cause of Action on behalf of a COLLECTIVE CLASS in accordance with 29 U.S.C. §216 which consists of all Field Managers employed in California by DEFENDANT during the period three (3) years prior to the filing of the Complaint and ending on the date as determined by the Court, and who performed work in excess of forty (40) hours in one week (the "COLLECTIVE CLASS").

89. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to willful violations of the FLSA.

90. 29 U.S.C. § 207(a)(1) provides in pertinent part:

Except as otherwise provided in this section, no employer shall employ any of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, for a workweek longer than forty hours

1 unless such employee receives compensation for his employment in excess of the  
2 hours above specified at a rate not less than one and one-half times the regular  
rate at which he is employed.

3 91. Section 213(a)(1) of the FLSA provides that the overtime pay requirement does  
4 not apply to:

5 any employee employed in a bona fide executive, administrative, or professional  
6 capacity (including any employee employed in the capacity of academic  
7 administrative personnel or teacher in elementary or secondary schools), or in the  
8 capacity of outside salesman (as such terms are defined and delimited from time  
9 to time by regulations of the Secretary, subject to the provisions of the  
Administrative Procedure Act [5 USCS §§ 551 et seq.] except [that] an employee  
10 of a retail or service establishment shall not be excluded from the definition of  
employee employed in a bona fide executive or administrative capacity because  
11 of the number of hours in his workweek which he devotes to activities not  
directly or closely related to the performance of executive or administrative  
12 activities, if less than 40 per centum of his hours worked in the workweek are  
devoted to such activities).

12 92. DEFENDANT has willfully engaged in a widespread pattern and practice of  
13 violating the provisions of the FLSA, as detailed above, by uniformly designating certain  
14 employees as "exempt" employees, by their job title and without regard to DEFENDANT's  
15 realistic expectations and actual overall requirements of the job, including the PLAINTIFF and  
16 the other members of the COLLECTIVE CLASS who worked on the production side of  
17 DEFENDANT's business enterprise. This was done in an illegal attempt to avoid payment of  
18 overtime wages and other benefits in violation of the FLSA and Code of Federal Regulations  
requirements.

19 93. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, the  
20 PLAINTIFF and the other members of the COLLECTIVE CLASS are entitled to overtime  
21 compensation for all overtime hours actually worked, at a rate not less than one and one-half  
22 times their regular rate of pay for all hours worked in excess of forty (40) hours in any  
23 workweek. DEFENDANT's failure to pay overtime wages as required by federal law was  
24 willful and not in good faith.

25 94. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the  
26 exempt status of an employee. The exempt or nonexempt status of any particular employee  
27 must be determined on the basis of whether the employee's salary and duties meet the  
28 requirements of the regulations in this part.

1           95. The exemptions of the FLSA as listed in section 13(a), and as explained by 29  
2 C.F.R. 541.3, do not apply to the PLAINTIFF and the other members of the COLLECTIVE  
3 CLASS, because their work consists of non-management, production line labor performed with  
4 skills and knowledge acquired from on-the-job training, rather than from the prolonged course  
5 of specialized intellectual instruction required for exempt learned professional employees such  
6 as medical doctors, architects and archeologists. Field Managers either do not hold an advanced  
7 degree, have not taken any prolonged course of specialization, and/or have attained the vast  
8 majority of the skills they use as employees of DEFENDANT from on-the-job training.

9           96. For an employee to be exempt as a bona fide "executive," all the following  
10 criteria must be met and DEFENDANT has the burden of proving that:

- 11           (a) The employee's primary duty must be management of the enterprise, or of a  
12 customarily recognized department or subdivision;  
13           (b) The employee must customarily and regularly direct the work of at least two (2)  
14 or more other employees;  
15           (c) The employee must have the authority to hire and fire, or to command  
16 particularly serious attention to his or her recommendations on such actions  
17 affecting other employees; and,  
18           (d) The employee must be primarily engaged in duties which meet the test of  
19 exemption.

20 No member of the COLLECTIVE CLASS was or is an executive because they all fail to meet  
21 the requirements of being an "executive " under section 13 of the FLSA and 29 C.F.R. 541.100.  
22 Moreover, none of the members of the COLLECTIVE CLASS managed the work of two or  
23 more other employees in a customarily recognized department or subdivision of the employer,  
24 and whose recommendations as to the hiring, firing, advancement, promotion or other change  
25 of status of the other employees were given particular weight and therefore, they do not qualify  
26 for the executive exemption.

27           97. For an employee to be exempt as a bona fide "administrator," all of the following  
28 criteria must be met and DEFENDANT has the burden of proving that:

- (a) The employee must perform office or non-manual work directly related to management or general business operation of the employer or the employer's customers;
- (b) The employee must customarily and regularly exercise discretion and independent judgment with respect to matters of significance; and,
- (c) The employee must regularly and directly assist a proprietor or an exempt administrator; or,
- (d) The employee must perform under only general supervision, work requiring special training, experience, or knowledge; and,
- (e) The employee must be primarily engaged in duties which meet the test of exemption.

No member of the COLLECTIVE CLASS was or is an administrator because they all fail to meet the requirements of for being an "administrator" under section 13(a) of the FLSA and 29 C.F.R. 541.300.

98. For an employee to be exempt as a bona fide "professional", DEFENDANT has the burden of proving that the primary duty of the employee is the performance of work that:

- (a) Requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or
- (b) Requires invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.

No member of the COLLECTIVE CLASS was or is a professional because they all fail to meet the requirements of being an "professional" within the meaning of 29 CFR 541.300.

Further, the PLAINTIFF and the other Field Managers operated under intense scrutiny from management and are strictly dictated by written guidelines and standardized procedures.

99. During the COLLECTIVE CLASS PERIOD, the PLAINTIFF, and other members of the COLLECTIVE CLASS, worked more than forty (40) hours in a workweek.



1 fund for restitution of the sums incidental to DEFENDANT's violations due to  
2 the PLAINTIFF and to the other members of the CALIFORNIA CLASS  
3 according to proof.

4 D) An order temporarily, preliminarily, and permanently enjoining and  
5 restraining DEFENDANT from engaging in similar unlawful conduct as set  
6 forth herein.

7 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

8 A) That the Court certify the Second and Third Causes of Action asserted by the  
9 CALIFORNIA LABOR SUB-CLASS as a Class Action pursuant to Fed. R.  
10 Civ. Proc. 23(b)(2) and/or (3);

11 B) Compensatory damages, according to proof at trial, including compensatory  
12 damages for overtime compensation due to the PLAINTIFF and the other  
13 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable  
14 CALIFORNIA CLASS PERIODS plus interest thereon at the statutory rate;

15 C) The wages of all terminated employees from the CALIFORNIA LABOR  
16 SUB-CLASS as a penalty from the due date thereof at the same rate until paid  
17 or until an action therefore is commenced, in accordance with Cal. Lab. Code  
18 § 203; and,

19 D) The greater of all actual damages or fifty dollars (\$50) for the initial pay  
20 period in which a violation occurs and one hundred dollars (\$100) per each  
21 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a  
22 subsequent pay period, not exceeding an aggregate penalty of four thousand  
23 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226.

24 3. On behalf of the COLLECTIVE CLASS:

25 A) That the Court certify the Fourth Cause of Action asserted by the  
26 COLLECTIVE CLASS as an opt-in Class Action under 29 U.S.C. § 216(b);

27 B) Issue a declaratory finding that DEFENDANT's acts, policies, practices and  
28 procedures complained of herein violated provisions of the Fair Labor

Standards Act; and,

C) That the PLAINTIFF and the other members of the COLLECTIVE CLASS recover compensatory damages and an equal amount of liquidated damages as provided under the law and in 29 U.S.C. § 216(b).

4. On all claims:

A) An award of interest, including prejudgment interest at the legal rate;

B) An award of penalties and cost of suit, as allowable under the law. Neither this prayer nor any other allegation or prayer in this Complaint is to be construed as a request, under any circumstance, that would result in a request for attorneys' fees or costs available under Cal. Lab. Code § 218.5; and,

C) Such other and further relief as the Court deems just and equitable.

Dated: January 14, 2011

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: /s/ Norman B. Blumenthal  
Norman B. Blumenthal  
Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: January 14, 2011

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: /s/ Norman B. Blumenthal  
Norman B. Blumenthal  
Attorneys for Plaintiff